



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Stanley Kulawik
County Attorney
Dawitt County
Cuero, Texas

Dear Sir:

Opinion Number 0-4268
Re: Can sinking funds of road
districts accumulated to
pay bonds be used for the
purpose of acquiring
rights-of-way?

We acknowledge receipt of your opinion request of
December 13th, and quote from your letter as follows:

"This county has recently been requested by
the State Highway Department, to acquire con-
siderable right-of-way to widen and eliminate
curves on Highway 29 and 81 in this county just
as soon as possible, for reason that said high-
ways have been declared and designated as stra-
tegic National Defense Highways, and apparently
there is a desire to rush this work. There are
no funds available in the county to care for the
cost of said rights-of-way, and apparently the
only thing the county could do would be to call
a bond election in said road districts for a suf-
ficient amount to cover the rights-of-way, and
from all indications the likelihood is that said
bond election would be defeated.

"The two rights-of-way asked for lie in two
separate road districts which were created years
back, and for which a bond election was held, and
which said bonds have been assumed by the State
Highway Department, and in one district the bonds
are being participated in by the State on a 100
per cent basis, and the other on a 87.87 per cent

Honorable Stanley Kulawik, page 2

basis, and because of the increased participation each year by the gas tax in said bonds being above the anticipation by the Commissioners' Court, apparently a sinking fund has accumulated in both of said road districts amounting to some \$12,000 or \$13,000, and which said sinking fund will not be needed at all for the purpose for which it was voted.

"It is very desirable on the part of this county at this time especially, because of the emergency, and the necessity for quick action in securing these rights-of-way, to use this surplus sinking fund in these two road districts if it can legally be done, to acquire rights-of-way in the same road districts in which said sinking funds have accumulated."

Section 52, of Article 3 of the Constitution of Texas, provides that road districts may vote bonds for the purpose of "the construction, maintenance, and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof".

Article 752k, Revised Civil Statutes, provides that when the bonds are issued, the Commissioners' Court shall levy an ad valorem tax sufficient to pay the interest on such bonds, and to provide a sinking fund to pay the bonds at maturity.

Article 752n, Revised Civil Statutes, provides that the Tax Collector shall collect said taxes and pay same to the County Treasurer. Article 753o, Revised Civil Statutes, provides that the County Treasurer is the custodian of the funds and shall promptly pay the interest and principal as it becomes due on the bonds out of the funds collected from said taxes.

Article 839, Revised Civil Statutes, provides that the County Treasurer shall not honor or pay any draft upon the interest and sinking fund provided for the payment of the bonds, except for the purpose of paying the interest on such bonds, or redeeming same, or for investment in securities as provided by law.

Honorable Stanley Kulavik, page #3

In view of the foregoing we see that the County Treasurer shall not honor or pay any draft upon the interest and sinking fund provided for the payment of bonds, except for the purpose of paying the principal and interest on such bonds, or for investment in securities as provided by law.

It, therefore, follows that a road district does not have the authority to acquire rights-of-way with money accumulated in the interest and sinking fund for the payment of bonds.

We further call your attention to Article 6674q, Vernon's Annotated Civil Statutes, the Act authorizing State assumption of County and Road District Highway Bonds. Section 8 of this article provides, in part, as follows:

* * * It is hereby declared that all eligible indebtedness, as herein defined, shall remain indebtedness of the respective counties or defined road districts which issued it, and said counties or defined road districts shall remain liable on said indebtedness according to its terms and tenor; and it is not the purpose or intention of this Act, or any part thereof, to obligate the State of Texas, directly or indirectly or contingently, for the payment of any such obligations or that the State of Texas should assume the payment of said obligations, and this Act is not to be construed as obligating the State of Texas to the holders of any of said obligations to make any payment of the same, or any part thereof, nor shall such holders have any rights to enforce the appropriation of any of the moneys hereinabove provided for, nor shall any provision hereof constitute a contract on the part of the State to make money available to any county for the construction of additional lateral roads. * * *

The funds made available under this Act must be appropriated by the Legislature every two years. It is not certain that the Legislature will make said appropriation.

Honorable Stanley Kulawik, page #4

Therefore, the sinking funds must be kept intact until the outstanding bonds are paid.

Trusting that this answers your question, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED JAN 8 1942
Boon Allen
FIRST ASSISTANT
ATTORNEY GENERAL

BY

Claud C. Boothman
Claud C. Boothman
Assistant

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